

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDMOND GASAWAY,)	No. CV 19-232 JLS (FFM)
)	
Petitioner,)	ORDER RE SUMMARY
)	DISMISSAL OF ACTION
v.)	
)	
WARDEN SWAIN,)	
)	
Respondent.)	

On February 5, 2019, petitioner filed what is captioned a Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal Custody. Petitioner alleges that he is currently confined at the Federal Correctional Institution in Victorville, California (“FCI Victorville”). Petitioner claims as grounds for relief: (1) lack of proper and adequate medical care; and (2) deliberate and unreasonable delay and termination of medical needs.

Petitioner's claims are not directed to the legality or duration of petitioner's current confinement. Rather, petitioner's claims are directed to conditions of confinement allegedly experienced by petitioner at FCI Victorville.

The Writ of Habeas Corpus is limited to attacks upon the legality or duration of confinement. *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484-86 (1973)). “A civil rights action, in contrast, is the proper method of challenging ‘conditions of . . . confinement.’” *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*,

1 411 U.S. at 498-99); *see also Young v. Kenny*, 907 F.2d 874, 875 n.1 (1990).

2 Petitioner's claim as presently alleged does not implicate the legality or duration
3 of confinement, but rather concerns the conditions of his confinement.

4 The Court does have discretion to construe petitioner's habeas petition as a
5 civil rights complaint. *See Wilwording v. Swenson*, 404 U.S. 249, 251, 92 S.Ct.
6 407, 30 L. Ed. 2d 418 (1971); *Hansen v. May*, 502 F.2d 728, 729 (9th Cir. 1974).
7 In this instance, however, the Court chooses not to exercise such discretion.

8 Provisions of the Prison Litigation Reform Act of 1995 ("PLRA") may
9 make it inappropriate to construe a habeas petition as a civil rights complaint.
10 Given the filing fee requirements of the PLRA, its provisions requiring *sua sponte*
11 review of complaints, and limits on the number of actions a prisoner may be
12 permitted to file *in forma pauperis*, a prisoner should not be obligated to proceed
13 with a civil rights action unless it is clear that he wishes to do so. *See* 28 U.S.C.
14 §§ 1915 & 1915A; 42 U.S.C. § 1997e; *Bunn v. Conley*, 309 F.3d 1002, 1007 (7th
15 Cir. 2002) (stating that courts should not recharacterize the nature of a prisoner's
16 claim because the PLRA and the Antiterrorism and Effective Death Penalty Act of
17 1996 created "pitfalls of different kinds for prisoners using the wrong vehicle");
18 *cf. Blueford v. Prunty*, 108 F.3d 251, 255 (9th Cir. 1997) (stating that a court
19 should not convert a civil rights action into habeas petition because of the
20 implications of the abuse of the writ doctrine).

21 If petitioner wishes to pursue a civil rights action, he should use the
22 appropriate form and pay the appropriate filing fee (or demonstrate that he is
23 unable to pay the fee¹). Petitioner is advised that pursuant to 42 U.S.C. § 1997e(c)

24
25 ¹ Petitioner is advised that if he files a Request to Proceed in Forma Pauperis with
26 respect to a civil rights action and such request is granted, petitioner will only be
27 excused from paying the full fee *in advance*. Petitioner nonetheless would be
28 required to make monthly payments on the fee until it is paid in full. In this regard,
28 U.S.C. § 1915(b)(1) provides, in part:

1 he must exhaust his administrative remedies before commencing his civil rights
2 action. In addition, any civil rights complaint filed by petitioner will be subject to
3 screening, for purposes of determining whether the action is frivolous or
4 malicious; fails to state a claim on which relief may be granted; or seeks monetary
5 relief against a defendant who is immune from such relief. 42 U.S.C. § 1997e(c).

6 For the foregoing reasons, the Petition is dismissed without prejudice. IT IS
7 SO ORDERED

8 DATED: February 15, 2019
9



10 JOSEPHINE L. STATON
United States District Judge

11 Presented by:

12 /S/ FREDERICK F. MUMM
13 FREDERICK F. MUMM
United States Magistrate Judge
14
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16

17 [I]f a prisoner brings a civil action or files an appeal in forma
18 pauperis, the prisoner shall be required to pay the full amount of a
19 filing fee. The court shall assess and, when funds exist, collect, as a
20 partial payment of any court fees required by law, an initial partial
filing fee of 20 percent of the greater of -

21 (A) the average monthly deposits to the prisoner's
account; or

22 (B) the average monthly balance in the prisoner's
23 account for the 6-month period immediately
24 preceding the filing of the complaint or notice of
appeal.

25 (2) After payment of the initial partial filing fee, the prisoner shall be
26 required to make monthly payments of 20 percent of the preceding
27 month's income credited to the prisoner's account. The agency
28 having custody of the prisoner shall forward payments from the
prisoner's account to the clerk of the court each time the amount in the
account exceeds \$10 until the filing fees are paid.